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International Convention on the Elimination of All Forms of Racial Discrimination

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Committee on the Elimination of Racial Discrimination

Concluding observations on the twenty-first and twenty-second periodic reports of New Zealand

Addendum

Information received from New Zealand on follow-up to the concluding observations*

[Date received: 23 August 2018]

* The present document is being issued without formal editing.

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Request for further information from New Zealand following the review of New Zealand's twenty-first to twenty-second periodic reports under the International Convention on the Elimination of All Forms of Racial Discrimination

1. On 22 and 23 August 2017, the Committee on the Elimination of Racial Discrimination adopted concluding observations on New Zealand's twenty-first and twenty-second periodic reports (CERD/CO/NZL/21-22). The Committee requested relevant information, within one year, on the implementation of three of its recommendations related to the Treaty of Waitangi settlement process (paragraph 15 of the concluding observations), implementation of the recommendations of the Wai 262 decision (paragraph 17), the inquiry into abuse of children and adults with disabilities in State care (paragraph 34(a)), and reducing the number of Māori and Pasifika children in State care (paragraph 34(b)). This paper provides information on developments in these areas over the 12 months since the adoption of the concluding observations.

Treaty of Waitangi Settlement Process

Land area and percentage of territory subject to the settlement process

2. It is the Crown's[1] aim that the settlement process will settle all historic Treaty of Waitangi claims in relation to Māori land grievances. The settlement process aims to meet the spiritual, economic, cultural and historical aspirations of each Māori claimant group.

3. In the 12 months since New Zealand's examination before the Committee, the Crown has settled with two further claimant groups, namely, Ngāti Hei and Ngāti Rangi with commercial and financial redress totalling $25.5 million dollars. Summaries of these and other's redress packages are attached in Appendix 1.

4. As at May 2018, approximately 92% of tribal groups had a recognised Deed of Mandate. That is, they had been endorsed by their iwi communities to represent them in Treaty settlement negotiations. Of those groups, yet to obtain a mandate, all have expressed a desire to enter into Treaty settlement negotiations.

5. All land in New Zealand, may in principle, be subject to the Treaty of Waitangi settlement process, however only a small percentage of the total land dispossessed from Māori has been returned in settlements. The Crown does not collect statistics on the percentage of land historically lost or returned through the settlement process. It is also unable to afford dollar for dollar compensation for land lost by Māori.

6. When settling Treaty of Waitangi claims, it is the Crown's policy that only Crown-owned land can be provided as redress. This preserves existing private property rights and is based on the principle that Treaty settlements should not create further land injustices. For some groups, the return of land is paramount. For others, the capital to create an economic base is paramount. For the majority, it is a mixture of both.

7. Treaty settlements do not extinguish Māori rights under the Treaty of Waitangi. Instead, the settlement process is intended to enhance the ongoing partnership between claimant Māori groups, the Crown and all others, in terms of the Treaty of Waitangi and its principles. This encourages parties to consider each other's rights and interests.

8. In November 2017, the Government created a new Crown/Māori Relations Ministerial portfolio and support unit within the Ministry of Justice. The function of the portfolio and unit is to grow and strengthen the Crown/Māori relationship as New Zealand moves into a post-Treaty grievance era.

[1] It is customary for the State party to refer to itself as 'the Crown'. The Crown refers to the executive branch of government and stands for the historical authority of the sovereign (the Queen or King of England) as Head of State.

9. Modern claims can be brought before the Waitangi Tribunal and, the Treaty of Waitangi Act 1975 gives the Waitangi Tribunal the power to inquire into and make recommendations on modern breaches of the Treaty. The settlement of historical claims is final, and, on and from the settlement date, the Crown is released and discharged from all obligations and liabilities in respect of those claims.

Description of redress packages and current market values

10. The Crown works closely with each claimant group to develop a settlement redress package that meets the aspirations of the claimant group and the availability of redress, particularly land. Each package is therefore unique.[2] A set of standard redress instruments common to most packages has been developed through the Treaty settlement process. Table 1 sets out these redress instruments.[3]

Table 1: Standard redress instruments

Settlement package		
Historical	*Cultural*	*Financial/Commercial*
Agreed historical account	Transfer of land	Cash
Acknowledgements	Co-governance	Transfer Crown assets
Apology	Relationship procedures	
	Place names	
	Statutory recognition	

11. Appendix 1 provides a summary of the total monetary value of the redress package provided to each settled group. The Crown does not collect information on the current market value of each settlement as:

(a) In many instances, the settled group entity which holds the settlement assets are not required to publicly notify their financial statements and therefore this information is not available; and

(b) Once redress has been transferred to a settled group's entity, the Crown does not have any further responsibility for the assets. Keeping some form of oversight or record of the performance of a settled entity's management of its assets would therefore be viewed as unnecessary.

12. Some settled groups publish their Annual Financial reports. Table 2 provides the key performance markers for two of these groups. These figures indicate the current market value of their redress packages. They also show how these groups have been able to build on the economic base that their settlements provided. It is possible that in the future these entities will produce annual profits which exceed their original settlement values.

Table 2: Ngāi Tahu and Waikato Tainui key performance markers

Settled group	*Total monetary value of settlement*	*Total holdings in 2017*	*Total net profit 2016/17*	*Total distributions 2016/17*
Ngāi Tahu	$170 million	$1.27 billion	$126.78 million	$46.6 million
Waikato Tainui	$170 million	$855 million	$114.8 million	$16 million

[2] The description of the redress package given in each settlement is contained in the individual deeds of settlement signed between the claimant group and the Crown. These documents are provided here: https://www.govt.nz/organisations/office-of-treaty-settlements/.

[3] A description of the standard redress instruments provided in these settlements (what they mean and how they work) is contained in the Crown's published settlement policy statement which can be found here: https://www.govt.nz/assets/Documents/Red-Book-Healing-the-past-building-a-future.pdf.

Wai 262 implementation

13. Wai 262 is the Waitangi Tribunal's 2011 report "*Ko Aotearoa Tēnei: A Report into Claims* Concerning *New Zealand Law and Policy Affecting Māori Culture and Identity*". While there has been no formal or comprehensive policy response to the report, the Government is implementing measures that respond to, or are informed by, the findings and recommendations of the report.

14. For example, in August 2018 the Government released the Maihi Karauna (Crown Strategy) for Māori language revitalisation. It outlines what the Crown will do to support a strong, healthy, thriving Māori language. "*Kia māhorahora te reo — every day, by everyone, every way, everywhere*" is the Crown's vision, which expresses its role to ensure that New Zealanders use, learn and value te reo Māori. Maihi Karauna complements the Maihi Māori (Māori Strategy) developed under the Māori Language Act 2016, for language revitalisation among whanau (family), in homes and at community level. The Maihi Karauna and Maihi Māori strategies are intended to achieve a shared vision that will be realised when te reo Māori is healthy in all respects as a thriving, living language, and when it is shared and used in daily life.

15. From September 2018, public consultation will commence on the review of the Plant Variety Rights Act 1987. The Government has publicly signalled its intention to address the recommendations in the Wai 262 report on plant variety rights as part of the review. The Government will also be consulting on options to introduce disclosure of origin requirements in the patents regime, a recommendation in the report.

16. In responding to other concerns in the Wai 262 report the Government has established co-governance arrangements for natural landmarks of particular cultural and spiritual significance to Māori. On 20 March 2017, the *Te Awa Tupua (Whanganui River Claims Settlement) Act* was passed by Parliament. It confers legal personality on the Whanganui River. This vests all the rights, powers, duties, and liabilities of a legal person on the river.

17. The Government's approach to Wai 262 to date, has been to address the findings of the Tribunal in the context of its wider work programme including issues that concern the partnership between the Crown and Māori. Although much work has been done, the work has often not expressly been associated with the Wai 262 report. The Government is currently considering how to better communicate the relevance of its current work programme to the Wai 262 report and how to ensure its future work programme more expressly addresses the report and its recommendations.

Royal Commission into Historical Abuse in State Care

18. On 1 February 2018, the Royal Commission into Historical Abuse in State Care ("Royal Commission' or 'the Inquiry") was formally established. While all statutory inquiries in New Zealand have the same legal powers, Royal Commissions are reserved for the most serious issues of public importance. The Inquiry is being led by former Governor-General, Rt Hon Sir Anand Satyanand.

19. The Inquiry's first task was to undertake independent public consultation on the draft Terms of Reference (draft TOR) and report to the Minister of Internal Affairs on those consultations.

20. On 29 May 2018, the Chair delivered his report on public consultations to the Minister of Internal Affairs. The Minister, in conjunction with relevant portfolio Ministers, is considering the Chair's report. Following these deliberations, the Minister will take to Cabinet a final proposal on the Terms of Reference, Royal Commission members, and budget. Once the final Terms of Reference have been approved by Cabinet and publicly notified, the Inquiry can begin to hear and consider evidence. It is anticipated that the Inquiry will begin its substantive investigations in mid- to late-2018.

Scope of the Inquiry — draft TOR

21. The draft TOR preamble states that New Zealand has international obligations to take all appropriate legislative, administrative, judicial or other measures to protect people from abuse. It also recognises that abuse of individuals in state care warrants prompt and impartial examination and notes the Committee's call for the establishment of an independent inquiry.

22. A key focus for the Inquiry is to examine the differential impacts of abuse in state care, including for Māori and Pasifika people, LGBTQI people, and persons who have experienced mental health issues. Among other things, the Inquiry is directed to develop ways of working that are victim and survivor focused, take a family centred view, work in partnership with Iwi Māori, and be responsive to Pacific communities. The Chair's consultation process will include consideration of an appropriate reference to the Treaty of Waitangi and its principles.

23. The draft TOR directs the Inquiry to examine: the nature and extent of abuse that occurred in State care; its immediate and long-term impacts on individuals, families and communities (including intergenerational impacts); the factors (including systemic) which may have caused or contributed to abuse; and lessons for the future.

24. The Inquiry can examine abuse occurring between 1 January 1950 and 31 December 1999, with some discretion to consider issues outside these dates. It will consider physical, emotional and sexual abuse and neglect, as defined in applicable domestic and international standards. It can consider the experiences of children, young persons, and adults (including those with disabilities).

25. The inquiry will examine current settings to prevent and respond to abuse, as well as the existing redress processes for victims and survivors. The term 'redress' is used widely to include monetary and non-monetary processes, as described in domestic and international guidance.

26. The inquiry's recommendations may concern legislative, administrative, policy, practice, or procedural change. It will make recommendations on the appropriate steps for the State to take to rectify the harm caused, including whether the State should issue an apology.

27. Under the Inquiries Act 2013, the Inquiry cannot make findings of civil, criminal or disciplinary liability, but can make findings of fault and can recommend that steps be taken to determine liability.

28. The draft Terms of Reference provide that the Inquiry is to issue a final report within the current Parliamentary term (which ends in 2020), unless the deadline is extended by agreement with the responsible Minister.

Reducing numbers of Māori and Pasifika children in state care

29. Established on 1 April 2017, one of the main goals of Oranga Tamariki — Ministry for Children is to reduce the over-representation of Māori and Pasifika in the care and protection and youth justice system. Oranga Tamariki's values include high aspirations for Māori children, and working closely with whānau (families), hapū (kinship groups) and iwi (tribes).

30. At the end of the March 2018 quarter, sixty-nine (69) percent of children in state care identified as Māori and six percent as Pasifika. Māori make up half of those who come into contact with the care and protection and youth justice systems, and are twice as likely to be referred to services operated by Oranga Tamariki compared to the total population.

31. Oranga Tamariki is required by legislation to set measurable outcomes for reducing disparities for Māori, and in 2018 measures are being developed to enable tracking of progress towards improving outcomes for this group. Outcome measures are required to be in place from 1 July 2019, with the release of the first annual public reporting, once data for the 12 months to 30 June 2020 is analysed.

32. From 1 July 2019, Oranga Tamariki will also have obligations to ensure:

(a) Policies, practices, and services of the department have regard to mana tamaiti (children) and the whakapapa (genealogy) of Māori children and young persons and the whānaungatanga (family) responsibilities of their whānau (family), hapū (sub tribe), and iwi (tribe);

(b) Development of strategic partnerships with iwi and Māori organisations to improve outcomes for Māori children, young persons, and their whānau (family) who come to the attention of the Ministry;

(c) Guidance to support cultural competency as a best-practice feature of the Ministry's workforce, is in place and is regularly reviewed.

33. Oranga Tamariki has a professional framework used by all practitioners. One practice standard called "*Whakamana te tamaiti: Empowering Māori children*", focuses on culturally responsive ways to promote rights. For example, through specialist genealogical research where children's ancestry is traced to provide them with cultural information helping shape their identity, belonging and connection to family relationships and resources. The standard also invites and includes immediate, and extended family groups to participate in the care and protection process. This is being trialled across 21 sites in New Zealand.

34. Other initiatives that focus on better outcomes and reducing the number of Māori and Pasifika children in care include:

(a) Using early-stage family meetings to support at risk Māori families;

(b) Supporting iwi (tribes) to coordinate their own Family Group Conferences, a structured decision-making meeting made up of 'family' members used when there are care and protection concerns or youth offending;

(c) Developing resources to raise awareness of Pasifika people's needs and build Oranga Tamariki's cultural responsiveness and expertise;

(d) Have engagement plans and tools to support external Pasifika stakeholders;

(e) Engagement with Pasifika young people and, providers to inform service design;

(f) Establishing a Pasifika Panel to provide thought leadership and champion engagement with Pasifika stakeholders; and

(g) Establishing a Pasifika Unit to champion the voices of Pasifika peoples across Oranga Tamariki.

Appendix

Commercial & Financial Redress for signed Treaty Settlement Deeds as at 4 May 2018

Nr.	*Iwi (Tribe)*	*Date deed signed*	*Commercial and financial redress (expensed value*)*
1	Waitomo	14/06/1990	n/a
2	Ngāti Whakaue	23/09/1993	$5 210 000
3	Ngāti Rangiteaorere	21/10/1993	$760 000
4	Hauai	30/10/1993	$715 682
5	Waikato Tainui Raupatu	22/05/1995	$170 000 000
6	Waimakuku	20/12/1995	$375 000
7	Te Maunga	2/10/1996	$129 032
8	Rotomā	6/10/1996	$43 931
9	Ngāi Tahu	21/11/1997	$170 000 000
10	Turangitukua	26/09/1998	$5 000 000
11	Pouakani	19/11/1999	$2 000 000
12	Te Uri o Hau	13/12/2000	$15 600 000
13	Ngāti Ruanui	12/05/2001	$41 000 000
14	Ngāti Tama	20/12/2001	$14 500 000
15	Ngāti Awa	27/03/2003	$43 390 000
16	Ngāti Tūwharetoa (BOP)	6/06/2003	$10 500 000
17	Ngaa Rauru Kiitahi	27/11/2003	$31 000 000
18	Te Arawa Lakes	18/12/2004	$2 700 000
19	Ngāti Mutunga (Taranaki)	31/07/2005	$14 900 000
20	Te Roroa	17/12/2005	$9 500 000
21	Affiliate Te Arawa Iwi/Hapū	30/09/2006	n/a
22	Affiliate Te Arawa Iwi/Hapū	11/06/2008	$38 600 000
23	Central North Island Collective	25/06/2008	$14 669 640
24	Taranaki Whānui ki te Upoko o te Ika	19/08/2008	$25 025 000
25	Waikato Tainui (River claim)	22/08/2008	n/a
26	Ngāti Apa (North Island)	8/10/2008	$16 000 000
27	Whanganui On-Account	31/07/2009	n/a
28	Ngāti Whare	8/12/2009	$9 568 260
29	Ngāti Manawa	12/12/2009	$12 207 780
30	Ngāti Raukawa (River)	17/12/2009	n/a
31	Waikato Tainui (River claim)	17/12/2009	n/a
32	Upper Waikato River Iwi	9/03/2010	n/a
33	Ngāti Tūwharetoa (River interests)	31/05/2010	n/a
34	Ngāti Maniapoto (Waipa River)	27/09/2010	n/a
35	Ngāti Kuia (Kurahaupo)	23/10/2010	$24 330 388
36	Ngāti Apa ki te Rā Tō (Kurahaupō)	29/10/2010	$27 830 388
37	Rangitāne o Wairau (Kurahaupō)	4/12/2010	$24 830 388

Nr.	*Iwi (Tribe)*	*Date deed signed*	*Commercial and financial redress (expensed value*)*
38	Ngāti Pāhauwera	17/12/2010	$20 000 000
39	Ngāti Porou	22/12/2010	$90 000 000
40	Ngāi Tamanuhiri	5/03/2011	$11 070 000
41	Maraeroa A and B Block Settlement	12/03/2011	$1 800 000
42	Ngāti Mākino	2/04/2011	$9 600 000
43	Ngāti Manuhiri	21/05/2011	$9 000 000
44	Ngāti Whātua o Kaipara	9/09/2011	$22 100 000
45	Waitaha	20/09/2011	$7 500 000
46	Rongowhakaata	30/09/2011	$22 240 000
47	Ngāti Whātua Ōrākei	5/11/2011	$18 000 000
48	Te Aupōuri	28/01/2012	$21 040 000
49	Ngāti Raukawa	2/06/2012	$50 000 000
50	Ngāti Ranginui	21/06/2012	$38 027 555
51	Tāmaki Makaurau Collective	8/09/2012	n/a
52	NgāiTakoto	27/10/2012	$21 040 000
53	Te Rarawa	28/10/2012	$6 000 000
54	Ngāti Toa Rangātira	7/12/2012	
55	Ngāti Rangiwewehi	16/12/2012	
56	Tapuika	16/12/2012	$6 000 000
57	Ngāti Koroki Kahukura	20/12/2012	$3 000 000
58	Ngāti Koata	21/12/2012	$11 760 000
59	Te Atiawa o Te Waka-a-Maui	21/12/2012	$11 760 000
60	Ngāti Pūkenga	7/04/2013	$7 000 000
61	Ngāti Rarua	13/04/2013	$11 760 000
62	Ngāti Tama ki Te Tau Ihu	20/04/2013	$12 060 000
63	Maungaharuru Tangitū Hapū	25/05/2013	$23 000 000
64	Ngāi Tūhoe	4/06/2013	$168 923 000
65	Ngāti Rangiteaorere	14/06/2013	$750 000
66	Ngāti Hauā	18/07/2013	$13 000 000
67	Ngāi Te Rangi	14/12/2013	$29 500 000
68	Ngāti Kuri	7/02/2014	$21 040 000
69	Te Kawerau ā Maki	22/02/2014	$6 500 000
70	Ngāruahine	5/08/2014	$67 500 000
71	Whanganui River	9/08/2014	$81 000 000
72	Te Ātiawa (Taranaki)	9/08/2014	$87 000 000
73	Tauranga Moana Iwi Collective	21/01/2015	$250 000
74	Ngāti Hineuru	2/04/2015	$25 000 000
75	Taranaki Iwi	5/09/2015	$70 000 000
76	Heretaunga Tamatea	26/09/2015	$105 000 000
77	Ngāi Tai ki Tāmaki	7/11/2015	$12 700 000
78	Rangitāne o Manawatū	14/11/2015	$13 500 000
79	Ngatikahu ki Whangaroa	18/12/2015	$6 200 000
80	Rāngitane o Wairarapa-Tamaki Nui-ā-Rua	6/08/2016	$32 500 000
81	Ahuriri Hapū	2/11/2016	$19 500 000

Nr.	*Iwi (Tribe)*	*Date deed signed*	*Commercial and financial redress (expensed value*)*
82	Te Wairoa	26/11/2016	$100 000 000
83	Ngāti Tamaoho	30/04/2017	$10 300 000
84	Ngāti Tūwharetoa	8/07/2017	$77 612 740
85	Ngāti Hei	17/08/2017	$8 500 000
86	Ngāti Rangi	10/03/2018	$17 000 000
Total			**$2 241 868 784**

* Total Expensed Settlement Value is defined as Financial and Commercial Redress and generally does not include the value of gifted and cultural redress.